

## Message Text

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ACTION NEA-09

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 6897

C O N F I D E N T I A L NEW DELHI 2124

FOLNG SENT NEW DELHI FROM CALCUTTA DTD FEB 13TH.

QUOTE: CALCUTTA 0368

E.O. 11652: GDS

TAGS: CASC, PFOR, IN

SUBJ: HARCOS/FLETCHER

SUMMARY: IN HIGH COURT FEBRUARY 12 JUSTICES TALUKDAR AND BANERJEE UPHELD THE LOWER COURT ORDER GRANTING CERTIFIED COPIES OF THE CHARGES TO HARCOS AND FLETCHER AND THE OTHER DEFENDANTS. DEFENSE ADVOCATE DUTTA. IN THE MIDDLE OF HIS SUBMISSION APPEALING THE FRAMING OF CHARGES ON THE GROUNDSTHAT ALL EVIDENCE HAD NOT BEEN SHOWN TO THE DEFENSE, REQUESTED A DELAY UNTIL FEBRUARY 18 AFTER SEEING THAT THE JUSTICES WERE NOT SYMPATHETIC TO HIS ARGUMENTS. HE LATER INFORMED CONSUL O'NEILL THAT HE WOULD REQUEST HARCOS AND FLETCHER TO DROP THIS MATTER. TRIAL IS NOW EXPECTED TO BE RESCHEDULED FOR LATE MARCH BECAUSE OF ABSENCE OF TRIAL JUDGE (CALCUTTA 0284). END SUMMARY.

2. SENIOR STANDING COUNSEL GUPTA, APPEARING FOR THE GOVERNMENT, ARGUED THAT THE DEFENDANTS WERE NOT ENTITLED TO CERTIFIED COPIES OF THE CHARGES FRAMED AGAINST THEM BECAUSE (A) THEY HAD ALREADY INSPECTED THE CHARGES; (B) COULD TAKE NOTES; AND (C) INFORMATION CONTAINED IN THE CHARGES WAS PREJUDICIAL TO THE SAFETY AND SECURITY OF THE STATE. DEFENSE ADVOCATE DUTTA IN A TEPID, UNINSPIRED SUBMISSION, WHICH ANNOYED THE JUSTICES, ATTACKED THE OFFICIAL SECRETS ACT AND WAS CALLED TO TASK BY THEM FOR NOT CONFIDENTIAL

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ARGUING WITHIN THE BOUNDS OF THE APPEAL. NOTWITHSTANDING THIS

THE JUSTICES, AFTER AN INSPECTION OF THE CHARGES, STATED THAT THERE WAS NOTHING IN THE CHARGES PREJUDICIAL TO THE SAFETY AND SECURITY OF THE STATE. JUSTICES NOTED SIGNIFICANTLY THAT THEY DID NOT RPT NOT AGREE WITH THE SESSIONS JUDGE THAT A COPY OF THE CHARGES WERE AN INHERENT RIGHT OF ALL DEFENDENTS AND IF THERE HAD BEEN ANYTHING WITHIN THE CHARGES WHICH WOULD HAVE EFFECTED THE SAFETY AND SECURITY OF THE STATE THEY WOULD NOT HAVE GRANTED COPIES.

3. THE DEFENSE APPEAL WAS THAT THE FRAMING OF CHARGES WERE NOT IN COMPLIANCE WITH PREVIOUS HIGH COURT ORDERS AND THAT THE DEFENSE DID NOT SEE ALL THE EVIDENCE USED IN THE FRAMING OF THE CHARGES. CLOSE QUESTIONING BY THE JUSTICES ELICITED FROM ADVOCATE DUTTA THAT THE DEFENSE HAD INSPECTED ALL THE EVIDENCE THAT WAS GOING TO BE USED AGAINST HARCOS AND FLETCHER IN THE TRIAL. REGARDING THE EVIDENCE THAT WAS NOT SEEN AT THE TIME OF THE FRAMING OF CHARGES BY THE DEFENSE AND WOULD NOT BE USED DURING THE TRIAL PROPER, THE JUSTICES INTIMATED THAT THERE SEEMED TO BE A DEFECT IN THE DEFENSE'S APPEAL ON THIS GROUND. AT THIS POINT, DUTTA REQUESTED A DELAY IN THE HEARING UNTIL HE COULD CONFER WITH HIS CLIENTS. DELAY WAS GRANTED UNTIL 1,00 PM, FEBRUARY 18. AFTER THE HEARING DUTTA ADVISED CONSUL O'NEILL THAT HE WAS GOING TO SUGGEST TO HARCOS AND FLETCHER THAT THIS MATTER BE DROPPED.

4. THIS HEARING WAS HELD IN CAMERA. OVER THE VOCIFEROUS AND LOUDLY WHISPERED COMPLAINTS OF THE SPECIAL BRANCH (ALOK GHOSH), STANDING COUNSEL RAISED NO OBJECTION TO THE PRESENCE OF CONSUL O'NEILL DURING THE HEARINGS.

5. THE JUSTICES AGAIN EXPRESSED THEIR ANNOYANCE AT THE DELAY IN THE TRIAL OF "THE AMERICAN GENTLEMEN". JUSTICE TALUKDAR STATED, "IF THEY ARE NOT GUILTY, THEY SHOULD BE LET OUT AND IF GUILTY, THE LAW SHOULD TAKE ITS COURSE." DEFENDING COUNSEL GUPTA AGREED WHOLEHEARTEDLY AND WHEN CONSUL O'NEILL MET HIM AFTER COURT TO THANK HIM FOR NOT RAISING OBJECTIONS TO HIS PRESENCE DURING AN IN CAMERA HEARING, HE NOTED THAT THIS CASE HAD DRAGGED ON FAR TOO LONG.

6. DEFENSE DID NOT RPT NOT RAISE THE MATTER THAT THE KING GEORGE'S DOCK WAS NOT UNDER THE OFFICIAL SECRETS ACT.

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## Message Attributes

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